IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 144 OF 2005

Trimbak Daji Kannav (deceased)
through LRs.
a) Madhukar Trimbakrao Kannav & ors. ... Appellants.
Versus.
Trimbak Coop.Consumer Society & ors. ... Respondents.

Shri M.M.Sathaye for the Appellants.

CORAM : ABHAY S. OKA, J.

DATED : 13th April, 2005.

P.C.:

1. Heard Shri Sathaye for the Appellants. He submitted that the decree for possession could not have been passed against the Appellants as the original Plaintiff was not in possession on date on which the sale deed was executed in his favour. He submitted that when the sale deed was executed in favour of the Respondent No.1-Plaintiff even his Vendor was not in possession of the said property. He, therefore, submitted that going by the case of the original Plaintiff, the suit was barred by limitation. He submitted that section 27 of the Limitation Act, 1963 will come into operation and therefore, the decree for possession in favour of the original Plaintiff on the basis of title could not have been passed.

2. I have considered the submissions made by the learned Counsel for the Appellants. There is

documentary evidence in favour of the Plaintiff. He has acquired ownership on the basis of a sale deed. The suit for possession is on the basis of the title which will be governed by Article 65 of the Limitation Act, 1963. Admittedly the Appellants have not raised the plea of adverse possession. Under Article 65, the limitation starts running from the date on which the possession of the Defendant becomes adverse to the Plaintiff. Unless the Appellants raise a plea of adverse possession bar of limitation prescribed by Article 65 will not apply. The plea of adverse possession ought to have been pleaded specifically in the pleadings. In the absence of any such plea, the suit for possession based on title filed by the Plaintiff will have to be held as within limitation. If the suit is within limitation, bar of limitation will not come into picture as the period of limitation provided for filing suit for possession had not expired.

3. No substantial question of law arises in the Second Appeal. The Second Appeal is accordingly dismissed.

Judge.